IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Miscellaneous No.74892-M of 2006

Decided on : December 13, 2007

Rajveer Singh

... Petitioner

VERSUS

Jaspal Singh and others

... Respondents

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.MJS Sethi, Senior Advocate assisted by
Mr.Harmandeep Singh Saini,
Advocate for the petitioner.

None for respondent No.1.

Mrs.K.K.Kahlon, Advocate
for respondents No.2 and 3.

Mr.H.S.Gill, Senior Advocate assisted by
Mr.R.K.Dhiman, Advocate
for respondents No.4 and 5.

Mr.Satish Kumar Bhanot, Senior Deputy Advocate
General for the State of Punjab – respondent No.6.

A.N.JINDAL, J.-

This petition is directed against the order dated 23.10.2006 passed by Additional Sessions Judge, Hoshiarpur, vide which respondent

No.2 to 5, namely; Parampreet Singh, Maninder Singh, Ajaypal Singh and Sukhreet Singh, were granted bail in case FIR No.97 dated 3.7.2005 under Sections 148, 302, 323, 341 read with Section 149 registered at Police Station Dasuya, District Hoshiarpur.

Besides the aforesaid four accused – respondents, there is another accused – respondent No.1 Jaspal Singh, who has been attributed fatal injury and is still undergoing incarceration. All the accused are facing trial for the aforesaid offences, wherein, the evidence is being recorded.

Initially, the case was registered against the respondents under Sections 323, 341, 506, 148 and 149 IPC, but after the injury attributed to Jaspal Singh (respondent No.1) was declared as dangerous to life, he was taken into custody and the offence under Section 308 IPC was added. However, since respondents No.2 to 5 have been attributed simple injuries, therefore, they were granted anticipatory bail vide order dated 17.2.2006 by this Court. Avtar Singh had died on 23.12.2005 i.e. prior to the decision of this Court on the petition for anticipatory bail. While extending the accused the benefit of provisions of Section 438 Cr.P.C, this Court observed as under:-

> "The learned counsel submits that in fact the complainant party was aggressor, they entered into the fields of the petitioner side and caused damage to their property (i.e. door of the tube-well). The petitioner side in order to save their person and property caused certain injuries to the complainant side, in

which Avtar Singh also received one injury on his head, which was ultimately declared dangerous to life. Dwelling upon her arguments, the learned counsel submits that Avtar Singh was discharged from the Hospital on 27.8.2005. He, however, developed some complications and was re-admitted in December, 2005. He was operated upon and ultimately, died in his house. She then submits that on account of death of Avtar Singh,, the prosecution agency now wants to add Section 302 IPC, for which the report of the Forensic Science Laboratory is being awaited and it has not been received till date. According to the learned counsel, so far as Parampreet and others (petitioners In Crl.No.49447-M/05) are concerned, they have caused simple injuries and admittedly the weapons used in this occurrence are blunt."

Thus, from the reading of the aforesaid order, it appears that this Court granted anticipatory bail on two grounds; firstly that respondents No.2 to 5 had caused simple injuries and, secondly, the weapons of offence used by them were blunt. In any case, after the death of Avtar Singh, the challan against the accused was presented in the Court under Section 304 IPC and the trial has ensued. However, after the Trial Court observed that charge under Section 302 IPC was required to be framed, it took them in custody and granted bail to them. There is nothing to show that they have misused the concession of bail and rather, when the offence was changed,

they sought recourse to law and obtained the relief under the due process of law. They did not abscond or otherwise misused the concession. The evidence has partly been recorded. The main accused, to whom the fatal injury has been attributed, has not so far been released on bail.

Consequently, finding no merit in the petition, the same is hereby dismissed.

(A.N.JINDAL)
JUDGE

The 13th day of November, 2007
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To be Referred to Reporter - **Yes/ No**